

# **MINUTES OF THE OPEN SESSION OF THE RHODE ISLAND ETHICS COMMISSION**

**May 16, 2006**

**The Rhode Island Ethics Commission held its 10th meeting of 2006 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, May 16, 2006, pursuant to the notice published at the Commission Headquarters and at the State House Library.**

**The following Commissioners were present:**

**James Lynch, Sr., Chair   James V. Murray\***

**Barbara Binder, Vice Chair   James C. Segovis\***

**George E. Weavill, Jr., Secretary\*   Ross Cheit\***

**Richard E. Kirby\***

**Also present were Kathleen Managhan, Commission Legal Counsel; Katherine D'Arezzo, Senior Staff Attorney; Staff Attorneys Dianne Leyden and Macall Robertson; and Commission Investigators Steven Cross, Peter J. Mancini, and Michael Douglas.**

**At approximately 9:12 a.m., the Chair opened the meeting.**

**The first order of business was to approve the minutes of the Open**

**Session held on May 2, 2006. Upon motion made by Commissioner Segovis, duly seconded by Commissioner Binder, it was**

**VOTED: To approve the minutes of the Open Session held on May 2, 2006.**

**AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Jr., Richard E. Kirby, James V. Murray, and James C. Segovis.**

**ABSTENTION: Ross Cheit.**

**At approximately 9:14 a.m., upon motion made by Commissioner Segovis, duly seconded by Commissioner Binder, it was unanimously**

**VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5 (a)(4), to wit:**

**a.)To approve the minutes of Executive Session held on May 2, 2006.**

**AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Jr., Richard E. Kirby, James V. Murray, James C. Segovis, and Ross Cheit.**

**At approximately 9:17 a.m., the Commission returned to Open Session. Chair Lynch reported out that in Executive Session the Commission voted to approve the Executive Session minutes of May**

**2, 2006.**

**The next order of business was review and approval of the minutes of Commission Regulation Subcommittees. The Commissioners discussed procedure relative to approving subcommittee minutes. Legal Counsel Managhan stated that the rule of necessity could be applied allowing the two members of Subcommittee A who attended Subcommittee A's meetings to vote on those minutes. Chair Lynch stated that he is invoking this rule so that these minutes can be approved.**

**Upon motion made by Commissioner Cheit, duly seconded by Chair Lynch, it was**

**VOTED: To approve the minutes of the Subcommittee A meeting held on January 10, 2006.**

**AYES: James Lynch, Sr., and Ross Cheit.**

**ABSTENTIONS: Barbara Binder, George E. Weavill, Jr., Richard E. Kirby, James V. Murray, and James C. Segovis.**

**Upon motion made by Commissioner Cheit, duly seconded by Chair Lynch, it was**

**VOTED: To approve the minutes of the Subcommittee A meeting held**

**on January 24, 2006.**

**AYES: James Lynch, Sr., and Ross Cheit.**

**ABSTENTIONS: Barbara Binder, George E. Weavill, Jr., Richard E. Kirby, James V. Murray, and James C. Segovis.**

**Upon motion made by Commissioner Cheit, duly seconded by Chair Lynch, it was**

**VOTED: To approve the minutes of the Subcommittee A meeting held on March 7, 2006.**

**AYES: James Lynch, Sr., and Ross Cheit.**

**ABSTENTIONS: Barbara Binder, George E. Weavill, Jr., Richard E. Kirby, James V. Murray, and James C. Segovis.**

**Upon motion made by Commissioner Weavill, duly seconded by Commissioner Segovis, it was**

**VOTED: To approve the minutes of the Subcommittee B meeting held on May 2, 2006.**

**AYES: Barbara Binder, George E. Weavill, Jr., and James C. Segovis.**

**ABSTENTIONS: James Lynch, Sr., Richard E. Kirby, James V. Murray, and Ross Cheit.**

**The next order of business was discussion of a draft proposal submitted by Subcommittee A (Nepotism). Senior Staff Attorney D'Arezzo informed that Staff Attorney Gramitt was tasked with drafting this regulation and that he and Executive Director Willever are in Superior Court today for a motion in the Handrigan case. She related Staff Attorney Gramitt's comment that the language provided is preliminary and his suggestions to add two new sections to address issues presented in the advisory opinion context regarding public officials participating in collective bargaining or budgets when family members are impacted. In response to Commissioner Segovis, Senior Staff Attorney D'Arezzo informed that these proposals would allow an official to participate in an up or down overall vote on a contract or budget. In response to Commissioner Binder, Senior Staff Attorney D'Arezzo informed that these situations are not addressed by section (b)(9) of the nepotism proposal. In response to Commissioner Binder, Chair Lynch informed that the nepotism proposal expands the current nepotism provision to include household members. Commissioner Segovis voiced his support of adding household members to the nepotism provision to reflect the changes in society. Commissioner Cheit stated that the nepotism proposal does not propose many changes to the current interpretation of the Code.**

In response to Commissioner Weavill, Senior Staff Attorney D'Arezzo informed that the only new aspects of the proposal are the addition of household member and subsection (b)'s prohibitions. In response to Commissioner Binder, Senior Staff Attorney D'Arezzo stated that Staff Attorney Gramitt did not yet have language drafted for his suggestions, which would codify the existing interpretation of the Code in the advisory opinion context. Chair Lynch suggested that Subcommittee A meet once more to review these proposals. Commissioner Kirby noted the difficulties of defining a household member by residence. He stated that a Mayor could hire his girlfriend as long as they maintained separate households and recommended the regulation address such commitments, although it may be a difficult legal determination. Chair Lynch stated that the current definition of household member may be too vague and that it may be improved. Commissioner Segovis inquired whether there is a legal definition of a live-in person.

Senior Staff Attorney D'Arezzo discussed her previous research on nepotism provisions and the difficulties associated with using terms like "boyfriend," or "girlfriend." Commissioner Kirby noted that the domestic assault statutes define a prior relationship in terms of a prior sexual relationship and that the Commission should not go down that road, but expressed his support for a clearer definition. Senior Staff Attorney D'Arezzo noted that depending on what is included in the definition, some degree of investigation may be required to determine if a person fits within the definition.

Legal Counsel Managhan commented that the existing nepotism provision refers back to the actions prohibited under Code of Ethics whereas the proposal does not, and suggested adding such references to the proposal. For example, she stated that subsections (b)(1) and (b)(2) do not state that the participation prohibited only regards matters having to do with an official action. She also commented that the proposal defines “immediate family member” but does not use that verbiage anywhere in the proposal. She suggested adding this term to the prohibitions in subsection (b) wherever “any person within her or her family” exists. Commissioner Binder noted that “immediate family member” is used in subsection (b)(6).

Commissioner Kirby inquired whether the proposal should define “estranged” in subsection (a)(2). Commissioner Kirby suggested defining estranged couples as separated spouses. Commissioner Weavill suggested taking out the term estranged completely. Commissioner Kirby agreed with this suggestion, noting that the term separated is also amorphous, whereas a spouse is clear. Commissioner Segovis pointed out as an example that Donald Trump and his ex-wife had a continuing business association although estranged. Senior Staff Attorney D’Arezzo noted that section 5(g) of the Code of Ethics uses the same language. Commissioner Binder stated that getting an estranged spouse a job could financially impact one’s self, in terms of alimony for example.

In response to Commissioner Weavill, Senior Staff Attorney D'Arezzo informed that past advisory opinions apply to the Code of Ethics as it existed at the time of issuance and that these proposals, if adopted, would apply prospectively. In response to Commissioner Segovis, Chair Lynch stated that he did not think that this proposal addressed the Commission's past concerns about the nepotism issues in fire departments. In response to Commissioner Cheit, Commissioner Segovis expressed his opinion that in past advisory opinions the Code was not strong enough to address some nepotism issues. Commissioner Binder noted that family members can work for the same agency, but questions arise when one family member can influence another family member through supervisory control or budgetary authority. Commissioner Kirby stated that there may be legitimate instances where exceptions may be needed, such as when two brothers are in the same department and one assumes a supervisory role over the other. He indicated that such instances require individuals to submit procedures to the Commission outlining how the nepotism issues will be avoided. Chair Lynch expressed his opinion that the municipality should come up with such procedures, not the Commission. The Commissioners discussed whether or not to have an exception in the nepotism proposal. Senior Staff Attorney D'Arezzo noted that subsection (b)(6) pertains to such promotional advancements. Commissioner Kirby expressed concern about the wording of subsection (b)(6) as it is unclear to him whether its prohibition pertains to the date of the proposed amendment becoming effective or the date of the promotion. Chair Lynch



suggested addressing this at the next meeting of Subcommittee A. Commissioner Binder pointed out that subsections (b)(7) and (b)(8) require advice from the Commission. Chair Lynch explained that these two provisions allow the Commission to make a determination in particular circumstances and expressed concern with granting too many exceptions.

Commissioner Kirby expressed concern about subsection (b)(7) given the past ethics complaint against the Chief of Police of Newport for selecting his brother to attend a training seminar at URI. He inquired whether the Commission should create language to cover this situation in which the family member does not receive a direct financial benefit. Senior Staff Attorney D'Arezzo recounted that the Prosecution argued that probable cause existed, but the Commission dismissed the matter. She noted that the main issue was whether the brother received a direct financial benefit given that he did not seek the training and did not use it for a promotion or future degree. Commissioner Kirby noted that the Commissioners were uncomfortable with this situation at the time and suggested that Subcommittee A consider it. Commissioner Cheit expressed his opinion that a different Commission may have viewed this situation in another way and that real issue is how to interpret a benefit under the Code. Commissioner Kirby stated that he supported clear language that will result in consistent outcomes and not depend on the membership of the Commission. Chair Lynch stated that this will be considered by Subcommittee A. Commissioner Kirby suggested that

the Staff provide the Commission with the minutes from the probable cause hearing to refresh the Commission as to its concerns at the time. Legal Counsel Managhan noted that she is hearing two conflicting views from the Commission on the nepotism proposal: whether to provide for exceptions or to make airtight prohibitions.

Commissioner Binder suggested adding the act of giving preference or preferential treatment to this provision to cover the Newport situation. Senior Staff Attorney D'Arezzo questioned whether this language would cover the Newport situation as the brother did not seek out the training. Commissioner Kirby suggested adding "employment advantage" to the language. Commissioner Cheit expressed his support of the suggestion and noted that it would address the fact that the brother did not seek out the training in the Newport case. Commissioner Weavill expressed concern about the impact of the nepotism proposal on the viability of small fire districts made up of family members. He stated that the Commission could grandfather existing districts, but expressed concern about small towns being able to staff their departments in the future. Commissioner Binder suggested adding a hardship exception. Commissioner Murray commented that this is necessary for the functioning of fire districts.

The next order of business was discussion of draft proposal submitted by Subcommittee B (Revolving Door). Commissioner Binder provided the Commission with a summary of Draft Regulation

**A and pointed out the differences between alternatives 1 and 2. In response to Chair Lynch, Commissioner Binder stated that the subcommittee considered extending the revolving door waiting period beyond two years but decided that a one year cooling off period was adequate in a small state. Commissioner Segovis noted that they reviewed the federal revolving door waiting periods. Commissioner Cheit questioned whether some top level positions, such as in the Governor's Office, could be identified and required to wait two years.**

**\* At approximately 10:12 a.m., Commissioner Kirby left the meeting.**

**Commissioner Binder summarized Draft Regulation B. In response to Commissioner Cheit, Commissioner Weavill explained that the proposals apply to school committee members because such persons often use this position to get other municipal jobs. Chair Lynch named several municipal positions sought out by school committee members, such as Transportation Director, and noted that this happens more in smaller towns. Commissioner Binder provided the Commissioners with a summary of Draft Regulations C and D.**

**\* At approximately 10:15 a.m., Commissioner Kirby returned to the meeting.**

**Commissioner Binder provided the Commissioners with a summary of Draft Regulations E and F, noting that F addresses the situation**

recently presented by the Noury complaint. At the pleasure of the Commission, Senior Staff Attorney D'Arezzo shared the Commission Staff's comments and concerns about the revolving door Regulations A, B, and C. Specifically, she pointed out that the exception in Regulation A may create disparate treatment of municipalities given the prohibitions in Regulation 5006. She noted that, depending upon the appointment process that exists in a municipality, the exception in subsection (b) of Regulation A may allow an appointment that is already prohibited under Regulation 5006. As an example, she stated that in Town A an appointment of a City Council member to another municipal position may only require the Mayor's approval based upon the Town Charter, which would not run afoul of Regulation 5006 or Regulation A. By comparison, in Town B the same appointment may require the approval of the City Council, which would run afoul of Regulation 5006. She also indicated that depending upon the circumstances such appointment could also violate section 5(e). She stated that this outcome of applying both Regulation 5006 and Regulation A creates concerns about whether the public could easily understand the Code of Ethics. Commissioner Binder stated that a person looking into municipal revolving door would look to Regulation A and suggested adding a provision to Regulation A providing that nothing in the Code of Ethics shall prohibit the application of subsection (b)'s exception, removing the concerns about Regulation 5006's application.

In response to Legal Counsel Managhan, Commissioner Binder

**stated that Regulation A would be a new stand alone regulation. Senior Staff Attorney D'Arezzo explained that adoption of proposed Regulation C would require repeal of Regulation 5007. Commissioner Weavill suggested removing the exception in Regulation A completely because the determination of a senior policy-making position will vary greatly by town. He also pointed out that Judge Fortunato recently ruled that a person holding certain municipal positions can only be removed for cause.**

**\* At approximately 10:27 a.m., Commissioner Kirby left the meeting.**

**Legal Counsel Managhan voiced her concern that the statute only addresses state officials and questioned whether the Commission should be addressing this via regulation. Senior Staff Attorney D'Arezzo informed that the Commission can adopt substantive regulations under its authority and is not limited to interpreting statutory provisions of the Code. Legal Counsel Managhan suggested that the Commission may wish to consider a legislative amendment to the statute.**

**\* At approximately 10:28 a.m., Commissioner Kirby returned to the meeting and Commissioner Weavill left the meeting.**

**\* At approximately 10:30 a.m., Commissioner Weavill returned to the meeting.**

Commissioner Binder pointed out that the state provisions provide exceptions for senior policy-making positions and that the same should be adopted for municipalities. Commissioner Weavill stressed that municipal senior policy-making positions fluctuate based upon the town and the mayor. Commissioner Weavill suggested that there be no such exception on the municipal level and that these municipal officials should just have to just wait one year. Commissioner Binder noted that a mayor's staff moves around a lot and this regulation should not limit such changes. Commissioner Kirby expressed his opinion that it would not be a problem to wait one year.

Commissioner Segovis pointed out that the proposals allow the Commission to grant an exception if it does not create an appearance of impropriety, which is not defined in the Code. In response to Commissioner Kirby, Senior Staff Attorney D'Arezzo explained the distinction between determining that certain facts to not give rise to such an appearance in an advisory opinion context versus prosecuting an individual for certain conduct.

In response to Chair Lynch, Commissioner Binder stated that Subcommittee B did not discuss defining hardship. Commissioner Kirby commented that a hardship determination requires the Commission to make a judgment based upon the facts. Commissioner Cheit pointed out that the Handrigan case was unusual as it was unclear whether a hardship included any financial

loss and suggested that some parameters could be made for determining a hardship. Commissioner Segovis suggested tasking a new subcommittee with defining hardship through the Code. Senior Staff Attorney D'Arezzo pointed out that proposed Regulations A and B do not contain a hardship exception, just exceptions at the Commission's discretion, and that only proposed Regulation D contains hardship exceptions.

Senior Staff Attorney D'Arezzo confirmed that the Commission wished to omit subsection (b) from Regulation A. She inquired whether the Commission would like to remove the definitional of "municipal agency" in Regulation A given that it already appears in the definition section of the Code. Commissioner Binder stated that she had no problem with the definition appearing in the regulation as long as it is the same as the one that already exists. Senior Staff Attorney D'Arezzo then noted that the definition of "employment" in Regulation A is not exactly the same as that which already exists on the state side. She explained that the current definition of employment referenced in sections 5(n) and 5(o) is not well worded since section 36-14-2(4) does not define the term employment. She inquired whether the Commission would like to amend the definition so that it is the same as the state side, which relies upon section 36-14-2(4) and Regulation C. Commissioner Binder expressed her opinion that the municipal regulations be the same as the state, specifically citing to section 36-14-2(4) and containing the language in Regulation C. Commissioner Weavill asked the Staff to

**make the changes suggested and provide the Commission with the revised regulations for review. He also asked that the regulations proposed by Staff Attorney Gramitt in 2003 be considered by the Commission now so that all regulatory proposals can be addressed at once. He asked the Staff to provide a list of these proposals to the Commission and noted that one proposal included adding non-profit to the Code's definition of business.**

**\* At approximately 10:51 a.m., Commissioner Segovis left the meeting.**

**Commissioner Kirby supported adding nonprofits and/or professional associations to the definition of business. Commissioner Cheit indicated that he would like to see the list of proposed regulatory actions.**

**\* At approximately 10:53 a.m., Commissioner Segovis returned to the meeting.**

**By consensus, the Commission agreed to make the same changes to Regulation B that were made to Regulation A, specifically that subsection (b) be omitted and the definition of employment be likewise changed. Upon Senior Staff Attorney D'Arezzo's inquiry, the Commissioners had no comments as to Regulation C.**

**At the pleasure of the Commission, Staff Attorney Robertson**



presented the Staff comments on the remaining revolving door proposals. With regard to Regulation D, she pointed out that subsection (a) does not apply to officials that did not participate in appointing members of a subsidiary board. She also noted that past advisory opinions applying this interpretation have required an official granted a hardship exception to recuse from future appointments and that subsection (a) does not require such recusal, although the Commission can require it under subsection (a)(1)(b). Upon Staff Attorney Robertson's inquiry, the Commissioners had no comments as to Regulation D(a).

With regard to Regulation D, section (b), Staff Attorney Robertson pointed out that the Department of Administration (DOA) oversees many state departments, which are listed as divisions of DOA on its website, and confirmed that the regulation was meant only to apply to the DOA itself. Commissioners Cheit and Binder commented that the provision should only apply to the DOA. Staff Attorney Robertson then noted that Regulation D, section (c) relies upon Rhode Island General Laws § 42-6-2, which does not list all of the directors of state departments anticipated by Subcommittee B, such as the Department of Health. Commissioner Binder recommended amending this subsection to state that a director of a state department who serves at the pleasure of the Governor "shall include, but not necessarily be limited to, the directors of state departments listed in R.I. Gen. Laws § 42-6-1 and such other provisions of the General Law which so define directors and which shall be amended from time to time."

**\* At approximately 11:08 a.m., Commissioner Cheit left the meeting.**

**Upon Staff Attorney Robertson's inquiry, the Commissioners had no comments on Regulations E and F. Commissioner Weavill suggested that the Staff provide the Commission with all of the revised proposals and again list the regulations on the Open Session agenda.**

**\* At approximately 11:10 a.m., Commissioner Murray left the meeting.**

**The next order of business was the Director's Report. Senior Staff Attorney D'Arezzo reported that she will provide the Commission with proposals for electronically recording the Commission's meetings at the next meeting. She informed that Executive Director Willever, Staff Attorney Gramitt, and Investigator Peter Mancini recently met with a delegation of government officials, prosecutors, and representatives from Croatia through the U.S. State Department's International Visitor Program.**

**The next order of business was New Business. There was none.**

**At approximately 11:13 a.m., upon motion made by Commissioner Kirby, duly seconded by Commissioner Weavill, it was unanimously**

**VOTED: To adjourn the meeting.**

**AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Jr.,  
Richard E. Kirby, and James C. Segovis.**

**Respectfully submitted,**

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**George E. Weavill, Jr.  
Secretary**